HIGH COURT OF UTTRARANCHAL AT NAINITAL

Habeas Corpus No. 11 of 2005

Baldev Raj s/o Sri Darbari Lal
R/o Ekta Automobile, Gadarpur, District
Udham Singh Nagar ..... Petitioner

Versus

1. Farid Khan s/o Noor Ahmad, Tanda Badli,
   District Rampur, U.P.
2. Union of India
3. State of U.P.
4. District Magistrate, Rampur
5. State of Uttaranchal
6. D.M., Udham Singh Nagar ... Respondents

Sri M.S. Pal, Sr. Advocate fort the petitioner
Sri Suhail Siddeque, A.G.A. & Sri Sudhir Singh, Advocate for the respondents.

Dated: 17.9.2005

Hon'ble Rajesh Tandon J.

Heard Sri M.S. Pal, Sr. Advocate for the petitioner and Sri Sudhir Singh, Advocate & Sri Suhail Siddeque, A.G.A. for the Respondents.

By the present writ petition the petitioner has prayed for a writ of habeas corpus directing the responden n0.2 to 6 to save the life and liberty of Km. Monika Narula from the illegal detention of respondent no. 1. Further prayer was made for directing the respondents to produce Km. Monika before this Court.

The writ petition was heard on 22.7.2005. Mrs. Monika and Farid Khan respondent no. 1, both were present on the said

date. Statement of Smt. Monika as well as Farid Khan were recorded on the said date. Both have deposed that they are residing as husband and wife and Mrs. Monika has attained the age of majority.

Sri Suhail Siddeque, A.G.A. has also filed a short counter affidavit wherein it has been mentioned that the final report in respect of criminal case under section 363 and 366 I.P.C. has been filed. It was also stated that Smt. Monika is major and she is above 18 years of age. Her date of birth is 5th April 1987.

Sri M.S. Pal, Sr. Advocate was given time on several occasions to prove by adducing evidence that Mrs. Monika is minor. Counsel for the respondent no. 1 has also produced copy of the order in writ petition no. 737 of 2005, in which both parties were appeared before Allahabad High Court. The statement of Mrs. Monika alias Mahak Khan was recorded before Allahabad High Court, which is reproduced as under:

My name is Mahak Khan. I got married with Farid Khan. Prior to my marriage my name was Monika Narula. My date of birth is 5th April 1987. I have passed my High School Examination from Government Girls Inter College, Gadarpur, District Udham Singh nagar (Uttranchal). My husband is doing denting and painting. I want to go along with my husband. After my marriage there had been harassment of the family members of my husband at the behest of Baldeo Raj, repondne tno. 5 and Navratan Singh, respondent no.6 who is maternal uncle. My date of birth in the school was given on the basis of the information supplied by my father. I am major and I have embraced Islam voluntarily without any force and want to live with my husband and the

respondents should be restrained from harassing the family members of petitioners no. 1 only because of this marriage.”

Both have appeared before this Court on 22nd July 2005, the statement of Smt. Monika Narula @ Mahak Khan, is reproduced as under:-

^^eSaus viuh ethZ ls † vizSy „ŒŒ‡ dks Qjhn [kku ls “kknh dh FkhA EkSa “kknh ds fnu ckfyx Fkh esjh tUe frFkh ‡ vizSy ƒ‹Š‰ gS ,oa bl laECk/k esa eSus gkbZLdwy izek.k i= fifV”ku esa Hkh yxk;k gSaA eSa vius ifr Qjhn [kku ds lkFk gh jguk pkgrh gWwA eq>s tku ls ekjus dh /kedh esjs ?kj okyksa dh rjQ ls nh tk jgh gS vkSj og ;g dgrs gSa fd dHkh rks ?kj vkvksxs rc rqe yksxksa dks ns[k ysaxsA eq>s ,oa esjs ifr Qjhn [kku dks esjs ?kj okykas ls [krjk gS ,o age nksuksa dks iqfyl izksVsD”ku pkfg;sA^^

Sri Farid Khan was also present and has stated to the following effect:-

^^esjk Jherh eksfudk u:yk ds ;gka vkuk tkuk fiNys nks lkyksa ls FkkA eksfudk u:yk ds ekrk firk mldh “kknh dgha vkSj djuk pkgrs Fks tcfd eksfudk u:yk eq>ls “kknh djuk pkgrh Fkh bl lEcU/k es og esjs ?kj vk;h vkSj geus † vizSy „ŒŒ‡ dks “kknh dj YkhA “kknh ds fnu ge nksuksa eS Qjhn [kku ,oa esjh iRuh eksfudk u:yk nksuksa gh ckfyx FksA esjh lkRuh dh tUe frFkh ‡ vizSy ƒ‹Š‰ gSaA EkSaus “kknh ds lECkU/k esa eksfudk Uk:yk ls dHkh tcjnLrh ugha dhA og esjs lkFk jguk pkgrh gSA bl “kknh ls eksfudk d ifjokj okys [kq”k ugha FksA og ckj ckj gesa ekj Mkyus dh /kedh fn;k djrs gSaA eq>s o esjh iRuh dks esjs llqjky okyksa ls cgqr [krjk gS ,oa bl lEcU/k esa gesa iqfyl izksVsD”ku pkfg;sA^^

In view of the statement so far as the prayer no. 1 that Km. Monika is being in illegal detention of respondent no. 1 is concerned, after the statement of Ms. Monika before this Court as well as before the Allahabad High Court has become infructuous and is not maintainable.

So far as the prayer (B) for protection of the person of Ms. Monika is concerned Ms. Monika and as well as respondent no. 1 Farid Khan have deposed before this Court that they are residing as husband and wife and they are legally wedded couple. Thus prayer (B) also has become Infructuous.

In view of above, there being no violation of Article 21 of the Constitution of India as no life or liberty of Ms. Monika is being involved, I find no substance in present writ petition. The writ petition is , therefore , dismissed, No order as to costs.

Dated: 17.9.2005

*Dhayani **Rajesh Tandon J.**